

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DISABILITY RIGHTS MISSISSIPPI, et al. PLAINTIFFS

v. CIVIL ACTION NO: 3:23cv350

LYNN FITCH, in her official
capacity as Attorney General
of the State of Mississippi, et al. DEFENDANTS

TRANSCRIPT OF MOTION FOR PRELIMINARY INJUNCTION

TUESDAY, JUNE 13, 2023

BEFORE THE HONORABLE HENRY T. WINGATE
UNITED STATES DISTRICT JUDGE

COURT REPORTER:

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Good morning. Please be seated.

Terri, call the case.

THE CLERK: Your Honor, this is Disability Rights Mississippi, et al. versus Lynn Fitch, et al., Civil Action No. 3:23cv320 HTW-LGI. We are here for a motion for preliminary injunction. And at this time I'm going to ask all the parties to introduce themselves for the record, starting with plaintiff.

MR. SOUSSI: Good morning, Ahmed Soussi on behalf of the plaintiffs.

THE COURT: All right. Good morning to you.

MR. HEARD: Good morning, Your Honor. Bradley Heard on behalf of the plaintiffs.

THE COURT: Thank you.

MS. JONES: Good morning, sir. Leslie Faith Jones on behalf of the plaintiffs.

THE COURT: Good morning to you.

MR. CHEUNG: Good morning, Your Honor, Ming Cheung.

THE COURT: All right. Good morning.

MS. HYMAN: Good morning, Your Honor. Claudia Williams Hyman for the plaintiffs.

THE COURT: Good morning.

MS. SMITH: Good morning, Your Honor. Casey Smith

1 for the plaintiffs.

2 THE COURT: Good morning.

3 MR. TOM: Good morning, Your Honor. Joshua Tom for
4 the plaintiffs.

5 THE COURT: Good morning.

6 MR. McDUFF: Good morning, Your Honor. Rob McDuff
7 for the plaintiffs.

8 THE COURT: Good morning.

9 Robb, they couldn't squeeze you in up here?

10 MR. McDUFF: I prefer to sit on the back row and out
11 of sight.

12 THE COURT: All right, Mr. McDuff. Good to see you.

13 Next? Over to the defense.

14 MR. MIRACLE: Good morning, Your Honor. Doug Miracle
15 from the Attorney General's Office on behalf of Attorney
16 General Lynn Fitch and Secretary of State Michael Watson, both
17 in their official capacities, and Gerald Kucia from the
18 Attorney General's Office on behalf of the same state
19 defendants.

20 THE COURT: All right.

21 MR. KUCIA: Good morning, Your Honor.

22 THE COURT: Good morning, Mr. Kucia.

23 Now, do you all feel outnumbered?

24 MR. MIRACLE: Just a little bit, Your Honor.

25 A trend, Your Honor.

1 THE COURT: All right.

2 All right, good morning, Mr. Mumford.

3 MR. MUMFORD: Representing myself, asking to be
4 excused.

5 THE COURT: I've had a conversation with my people
6 about you and so I will get back to you in just a second.

7 Is there anybody else?

8 Well, I guess not. I guess I'll start with you right
9 now.

10 Mr. Mumford, you contend that you are a nominal party
11 and that you do not intend to play any role today and you do
12 have duties pursuant to your -- your duties as a county
13 attorney and you are asking to be excused so you can go about
14 your duties.

15 I'm inclined to agree to excuse you unless I hear
16 some strenuous objection from anybody.

17 So let me start over here with the plaintiff. Is
18 there any objection to Mr. Mumford being released today?

19 MR. SOUSSI: No, Your Honor. We have no objection.
20 Just ask that whatever the ruling is, he is bound by it.

21 THE COURT: Mr. Mumford, you don't have any problem
22 with that, do you?

23 MR. MUMFORD: No, Your Honor.

24 THE COURT: Okay. And then what about the defense?

25 Thank you so much.

1 MR. MUMFORD: Thank you.

2 THE COURT: What about the defense?

3 MR. MIRACLE: No objection, Your Honor.

4 THE COURT: All right. Then, Mr. Mumford, then you
5 are free to go about your duties today, but if there is some
6 ruling which embraces you, then I suggest that the parties
7 contact you to let you know what that is so that you would know
8 if you want to be bound by it. Otherwise you would be bound by
9 it. All right.

10 MR. MUMFORD: Yes, Your Honor.

11 THE COURT: So then you can be excused. Thank you so
12 much.

13 What brings us here this morning is a motion by the
14 plaintiff for a motion for a preliminary injunction. Who would
15 be making the argument on behalf of the plaintiffs?

16 MR. SOUSSI: I will be, Your Honor.

17 THE COURT: All right. And prior to making your
18 arguments I need to know whether you are going to provide any
19 additional supplementation relative to any matters of evidence.

20 Do you intend to call any witnesses?

21 MR. SOUSSI: No, Your Honor.

22 THE COURT: Any more documents that you wish to
23 submit to the court?

24 MR. SOUSSI: No, Your Honor.

25 THE COURT: Are you ready to make your argument?

1 MR. SOUSSI: Yes, I am, Your Honor.

2 THE COURT: How much time do you need?

3 MR. SOUSSI: Fifteen minutes, Your Honor.

4 THE COURT: You sure 15 minutes is enough?

5 MR. SOUSSI: Yes, Your Honor, 15 minutes, and then a
6 couple minutes for rebuttal if that's okay.

7 THE COURT: All right. Now, if you need more than 15
8 minutes, let me know.

9 MR. SOUSSI: Yes, Your Honor.

10 THE COURT: And because whatever time that the court
11 provides to you will be provided to the other side.

12 I have read your submission, but still you need to
13 make your record.

14 MR. SOUSSI: Yes, Your Honor.

15 THE COURT: All right. Go to the podium.

16 MR. SOUSSI: Good morning, and may it please the
17 court.

18 My name is Ahmed Soussi and I have the honor of
19 representing the plaintiffs in this matter.

20 Your Honor, we're here today seeking to enjoin Senate
21 Bill 2358, which is scheduled to go into effect July 1, because
22 if it were to be allowed to go into effect, it has the
23 potential to disenfranchise thousands of voters who plan to
24 vote by mail in the upcoming primary election.

25 Your Honor, Section 208 of the Voting Rights Act

1 guarantees that voters with disabilities --

2 THE COURT: Now, counsel, could you slow down just
3 some?

4 MR. SOUSSI: Yes, Your Honor.

5 THE COURT: And just take your time. We have plenty
6 of time today.

7 MR. SOUSSI: Yes, Your Honor.

8 THE COURT: You all are the only thing on my calendar
9 today, so you can take your time.

10 MR. SOUSSI: Yes, Your Honor.

11 THE COURT: All right. Go right ahead.

12 MR. SOUSSI: Thank you, Your Honor.

13 Section 208 of the Voting Rights Act guarantees that
14 voters with disabilities are able to select anyone other than
15 their employer or union representative to assist them in the
16 return of their ballot. The reason why voters have such a wide
17 ranging choice is because Congress said that's the only way to
18 guarantee that a voter with disabilities is able to effectuate
19 the right to vote is to have them select the person of their
20 choice.

21 However, Mississippi has recently passed Senate Bill
22 2358 which criminalizes this act of returning a ballot. If
23 this court were not to enjoin Senate Bill 2358, friends,
24 neighbors, anyone the voter selects who doesn't meet one of the
25 few exceptions of Senate Bill 2358 will be subject to one year

1 in county jail or up to a \$3,000 fine.

2 This creates a conflict with federal law, Your Honor.
3 And federal law preempts conflicting state law.

4 The question in front of the court today is whether
5 Senate Bill 2358 should be enjoined. The answer is yes,
6 because the Fifth Circuit with text and the purpose of
7 Section 208 all demonstrate clearly that plaintiffs will
8 succeed on the merits.

9 Additionally, Your Honor, the remaining injunction
10 factors all favor the plaintiffs as well. For those reasons,
11 Your Honor, we ask this court to grant plaintiffs' motion.

12 Beginning with the success of the merits, Your Honor,
13 under the supremacy clause state laws that conflict -- state
14 laws conflict with federal law when they are an obstacle to the
15 accomplishment and execution of the full purposes and
16 objectives of Congress.

17 The Fifth Circuit has already answered when state
18 laws conflict with Section 208. In OCA-Greater Houston versus
19 Texas the Fifth Circuit held that state laws that conflict --
20 that impermissibly narrow a voter's choice conflict with
21 Section 208. This is exactly what Senate Bill 2358 does and
22 plaintiffs demonstrate the real life example of this.

23 For example, plaintiff, Mr. William Earl Whitley, is
24 a Vietnam war vet who lost both of his legs due to his service
25 in the war. Mr. Whitley is often unable to get his mail. He

1 relies on friends and neighbors, two groups of people who would
2 be -- who would meet the exceptions of Senate Bill 2358.

3 In the 2022 election, Mr. Whitley relied on his
4 friend, plaintiff Ms. Yvonne Gunn, to return his ballot. And
5 he wants to have his friend return his ballot again for this
6 upcoming election but now fears because she doesn't meet one of
7 the few exceptions, he will be unable to vote.

8 His choice has been impermissibly narrowed.

9 THE COURT: You name some other persons in your
10 papers who have relied upon others who performed the same chore
11 you just mentioned. Are any of those persons present here
12 today in court?

13 MR. SOUSSI: No, Your Honor, because -- or our
14 organizational plaintiff, yes, Your Honor, we have
15 representatives from our organizational plaintiffs. The
16 individuals were unable to come. All of them are in Chickasaw
17 County and they are listening on now on the phone line, though.

18 THE COURT: All right then.

19 Continue your argument.

20 MR. SOUSSI: Yes, Your Honor. Thank you.

21 Your Honor, not only is the Fifth Circuit clear but
22 the plain text as well. Section 208 guarantees that a voter
23 with a disability may be able to be given assistance by a
24 person of their choice other than just two restrictions, their
25 employer and union representative.

1 If Congress wanted to limit the voter's choice any
2 more, it could have done so, but it didn't. And that goes back
3 to what that clear purpose of the only way to effectuate a
4 voter with a disability their right is to allow them to select
5 the person they trust to return their ballot.

6 Another example, as we said, was Ms. Cunningham, who
7 is a plaintiff in this matter. Ms. Cunningham has been a
8 voting rights advocate for the last 60 years in Chickasaw
9 County. She ensures that voters in her community are able to
10 vote. She's the one who told Mr. Whitley that he was eligible
11 to vote by mail. However, because she doesn't meet the
12 exception for S.B. 2358, she now fears that if she continues to
13 do this work, she'll be prosecuted.

14 And even for the voters she may meet the exceptions
15 for, she still feels that she'll be prosecuted because the
16 terms are not defined. Senate Bill 2358 creates exceptions for
17 a voter's family member, household member or caregiver.
18 However, like I said, the terms aren't defined.

19 One of the people Ms. Cunningham assists is
20 Ms. Elise. And Ms. Elise is Ms. Cunningham's second half
21 cousin. Ms. Cunningham doesn't know if a family member is
22 going to be that broad, so she fears that she'll be unable to
23 assist her, and Ms. Elise told Ms. Cunningham that if it wasn't
24 her sending her ballot in, she wouldn't vote. Thus Senate Bill
25 2358 criminalizes Ms. Cunningham for doing something that the

1 federal law Section 208 guarantees her to do.

2 Additionally, Your Honor, as I said, Disability
3 Rights Mississippi is here, and they are the protection and
4 advocacy agency for the state. They represent the interests of
5 all Mississippians with disabilities. They fear that because
6 "caregiver" is not defined that voters who are in congregate
7 facilities would often have to rely on staff members to send
8 back their mail out of an abundance of caution did not actually
9 send back those ballots because they would be subject to
10 criminal prosecution. Senate Bill 2358 silences their voices
11 as well.

12 The defense only relies on an outlier case to try to
13 tell this court that the Fifth Circuit isn't binding.

14 First of all, that isn't correct, as we clearly --

15 THE COURT: Before we get to that case, you are
16 telling me that there is no definition of "caregiver." The
17 defense in their papers submitted a definition. So do you
18 accept that definition?

19 MR. SOUSSI: No, Your Honor, that def -- there is
20 no -- there is nothing in the record that states that the
21 legislature intended that to be the definition.

22 Even if that was the definition, two -- there are two
23 issues with it. The first issue is it's not broad enough as
24 208 guarantees that a voter gets to select anyone. And this
25 goes back to OCA-Greater Houston, which is binding precedent,

1 that says that the state cannot grant someone a federal right
2 but then restrict it and create a narrower right than what's
3 guaranteed.

4 Section 208 says that the only two people a voter
5 cannot select is their employer/union representative.

6 I understand that the caregiver definition has other
7 categories for friend and stuff like that, but as Disability
8 Rights Mississippi declaration --

9 THE COURT: Slow down just a little.

10 MR. SOUSSI: All right. Sorry, Your Honor.

11 THE COURT: All right.

12 MR. SOUSSI: All right. As Disability Rights
13 Mississippi's declaration demonstrates, that in certain
14 facilities it's not just one person actually taking the mail
15 for someone who is living in these facilities. It's a long
16 chain. So it's unclear that they would be able to -- be
17 considered a caregiver under this definition. And that goes
18 back to the chilling effect.

19 With an upcoming election at the end of July, voters
20 are going to have to make a decision if this court doesn't
21 enjoin this law, "Do I risk being prosecuted by doing something
22 federal law guarantees?"

23 And, Your Honor, as I said, not only is OCA clear,
24 but federal courts have shown little tolerance for any
25 narrowing of Section 208, as we cite to our brief.

1 Thus, Your Honor, because the Fifth Circuit, because
2 of the clear text, and the purpose, plaintiffs have
3 demonstrated that they will clearly succeed on the merits and
4 have met their burden.

5 Turning, Your Honor, to the other remaining factors.

6 THE COURT: So then you are not satisfied with the
7 dictionary definition of "caregiver"?

8 MR. SOUSSI: We're not -- yes, Your Honor, we're not
9 satisfied with the definition that the defense cites to in
10 their brief.

11 THE COURT: And you're not satisfied with any other
12 definition that might appear in a dictionary?

13 MR. SOUSSI: Your Honor, I believe the issue there is
14 what Section 208 guarantees. It guarantees that the voter may
15 select anyone except two options.

16 So depending on what the definition of "caregiver"
17 is, if it limits by any chance, other than those two
18 restrictions, it's preempted by federal law. And that goes
19 back to OCA-Greater Houston where a state can't give someone a
20 right but then make it more narrow than federal law guarantees.

21 THE COURT: So why shouldn't this court accept the
22 definition of "caregiver" as widely viewed?

23 MR. SOUSSI: So just so I understand, the normal
24 definition, just anyone who returns a ballot or?

25 THE COURT: So what is, what is your problem with the

1 term "caregiver" in its usual definitional set?

2 MR. SOUSSI: Sure, Your Honor.

3 So a couple of issues. The first one is depending on
4 how broad caregiver is, is we don't -- only the voter knows who
5 can assist them. So there's different categories.

6 So, yes, maybe someone who is a friend who helps
7 people with certain tasks, right? But if there is a situation
8 where that voter is unable to get a friend and has to just get
9 a complete stranger because that's the only person in their
10 community who can assist them, right? Depending on what this
11 definition of caregiver is, is it going to take in effect the
12 people who's -- you know, the random stranger.

13 Section 208 guarantees that the voter can pick anyone
14 except two options. And Congress was -- the reason why
15 Congress made it so like is because they understood that voters
16 with disabilities are the only people themselves know who can
17 they trust to return their ballot. And that's the issue with
18 that caregiver definition. And we believe that Section 2 -- or
19 OCA-Greater Houston reflects that a wide-ranging definition of
20 caregiver won't work.

21 In that case, Your Honor, Texas said that an
22 interpreter would not be able -- that an interpreter had to be
23 someone who was a registered voter in the county. And there
24 the Fifth Circuit said that Texas impermissibly narrowed the
25 definition.

1 Here we have a much -- a restriction that goes far
2 past that. Someone can eventually become a registered voter.
3 Someone can't become a family member, a household member.

4 And to your point about caregiver, it's the voter's
5 choice. So if he wants to pick someone random on the street to
6 assist them because that's the only person that they can, that
7 is a right given to the voter. And we would argue that
8 caregiver doesn't have -- that there is no way to encompass all
9 that.

10 Turning to irreparable harm, Your Honor, the defense
11 don't dispute the irreparable harm towards Mr. Whitley,
12 Ms. Cunningham and Ms. Gunn. So their arguments to our
13 organizational plaintiffs also fail because they have the same
14 irreparable harm.

15 Disability Rights Mississippi is the, as I said, is
16 the protection and advocacy agency. They are representing
17 every single voter with a disability in Mississippi which are
18 having their rights restricted by Senate Bill 2358.

19 And for League of Women Voters, they represent all
20 the assisters who fear prosecution. Thus, their argument for
21 irreparable harm fails.

22 Additionally, the organizations themselves are harmed
23 by this because of the frustration of mission as exhibited in
24 Disability Rights Mississippi's declaration. They're planning
25 over 40 trainings to be before the August primary to ensure

1 voters understand that if they get assistance from someone who
2 doesn't meet one of the few exceptions, they will be subject to
3 one year in county jail or up to a \$3,000 fine. Thus,
4 plaintiffs have met their burden.

5 To the other two factors, Your Honor, the public
6 interest strongly favors an injunction here because it's in the
7 public's interest to allow as many qualified voters to vote.
8 Because once the election occurs, there can be no do-overs.

9 Additionally, the state isn't injured by not being
10 able to enforce a law that will likely be found to be
11 preempted. And for the balance of the equities in this
12 situation, the longstanding status quo is to allow people like
13 Ms. Mamie to -- Ms. Cunningham to assist the people in her
14 community. That's what an injunction would do here. It will
15 allow people to continue to do what they have been doing, and
16 that was sufficient for the Ninth Circuit in Feldman versus
17 Arizona Secretary of State.

18 Unless the court has any other questions...

19 THE COURT: Starting with the organizational
20 plaintiffs. The challenge waged by the defense is that they
21 are not a proper party here. So why don't you tell me why they
22 are.

23 MR. SOUSSI: Yes, Your Honor.

24 So both of our organizational plaintiffs have both
25 associational standing and organizational standing. For

1 Disability Rights Mississippi, they are, as we cite to in our
2 brief, because they're the protection advocacy agency, they
3 have statutory authority to bring claims on behalf of every
4 single person here, every single Mississippi voter with a
5 disability. That meets the Hunt test sufficiently.

6 And to the question of individualized plaintiffs,
7 that isn't in question here because a preemption claim is a
8 question of law. There doesn't -- it's about what's the
9 purpose and does it violate the actual -- does it frustrate the
10 mission and objectives? So there doesn't, there doesn't need
11 to be individual plaintiffs.

12 For League of Women Voters as well to show that they
13 have the right to assist can be seen by Section 208's plain
14 text. So for associational standing, Your Honor, that's met,
15 no question.

16 And we also ask this court to take notice in our
17 briefs where we cite to Disability Rights North Carolina, which
18 is a sister organization of Disability Rights Mississippi,
19 which just won a similar Section 208 claim with a similar
20 restriction on summary judgment. And the court there granted
21 an injunction for every single voter with a disability in North
22 Carolina.

23 For organizational standing, as I just mentioned,
24 Disability Rights Mississippi's mission has been frustrated
25 because now when they go into the facilities, instead of the

1 small voting rights presentation that they do, they now have to
2 warn voters about choosing someone who doesn't meet one of the
3 few exceptions because of this high punishment of one year in
4 county jail and a \$3,000 fine for doing something that federal
5 law allows them.

6 For the League of Women Voters, Your Honor, they also
7 allege that now they have to --

8 THE COURT: One second. Hold on.

9 Fred, do you need me to slow him down some more?

10 MR. SOUSSI: Sorry, Your Honor. Sorry.

11 THE COURT: Okay.

12 MR. SOUSSI: Sorry. Sorry.

13 Sorry, Your Honor.

14 THE COURT: Now, you know he has to make a verbatim
15 record.

16 MR. SOUSSI: Yes. Yes, Your Honor. Yes. Yeah.

17 THE COURT: Everything which is being stated here.

18 MR. SOUSSI: Right.

19 THE COURT: And from time to time you're getting more
20 excited.

21 MR. SOUSSI: Sorry, Your Honor.

22 THE COURT: So could you kind of restrain yourself
23 just a little bit?

24 MR. SOUSSI: Yes, Your Honor. Yes, Your Honor. Last
25 time. Won't happen again.

1 THE COURT: All right. Go ahead.

2 MR. SOUSSI: So League of Women Voters, Your Honor,
3 have shown that they -- their mission is to educate the voters
4 and get out the vote. They want to get their members to
5 participate in the electoral process. Now they have found out
6 that if their members assist voters with disabilities they will
7 be subject to those high punishments of Senate Bill 2358.

8 So what they did is they're now creating new
9 materials to warn their members and the community, which is the
10 exact diversion of resources that the Fifth Circuit said in
11 OCA-Greater Houston that was sufficient.

12 OCA-Greater Houston was an organization that
13 similarly did get out the vote and voter education. When they
14 found out about Texas's new law limiting interpreters to only
15 registered voters, it started making calls to community members
16 to warn them, to tell them what's -- what -- to warn them about
17 ways not to avoid the law. This is exactly what League of
18 Women Voters of Mississippi has done here.

19 And the last thing I would say about standing, Your
20 Honor, is this court really needs to find for this matter that
21 they only meet one.

22 We argue they have met both associational and
23 organizational, but all of that needs for this case is just
24 one. So we meet both of them.

25 Unless the court has any other questions or...

1 THE COURT: All right. Let's talk about exemptions
2 now.

3 MR. SOUSSI: Sure. Yes, Your Honor.

4 THE COURT: Preemption, I mean. Preemption.

5 MR. SOUSSI: Yes, Your Honor.

6 THE COURT: You've resorted to that term more than
7 once in your address to the court on preemption. But you would
8 agree with me that the federal enactment does not discuss
9 preemption, does it?

10 MR. SOUSSI: I apologize, Your Honor?

11 THE COURT: The federal enactment does not address
12 preemption.

13 MR. SOUSSI: It addresses preemption in the
14 legislative history, Your Honor.

15 It says that a state will be preempted if it creates
16 an undue burden. And then they give an example of what an
17 undue burden is. They say an undue burden is when a voter is
18 unable to get the assistance of their choice.

19 We have shown the court real-life examples of voters
20 who are unable to get that assistance. And I would also argue,
21 Your Honor, the Fifth Circuit has already answered this
22 question. They said that Section 208 -- state laws are
23 preempted to Section 208 when they impermissibly narrow a
24 voter's choice. That's exactly what Senate Bill 2358 does when
25 it tells Mr. William Whitley that he is unable to rely on

1 Ms. Gunn to return his ballot.

2 THE COURT: But the body of the act itself doesn't
3 really respond to a declaration that all state laws are
4 preempted.

5 MR. SOUSSI: I apologize, Your Honor. I'm sorry.
6 Can I hear you?

7 THE COURT: The body of the act does not specify that
8 all state laws are preempted.

9 You find this in legislative history; correct?

10 MR. SOUSSI: Yes, Your Honor, it's in legislative
11 history.

12 THE COURT: But you don't find it in the body of the
13 act itself.

14 MR. SOUSSI: Correct, Your Honor.

15 What I would argue, Your Honor, is that the supremacy
16 clause, those states that federal law preempts conflicting
17 state law. And Senate Bill 2358 conflicts with the rights that
18 are given to voters here in Mississippi.

19 So even though it doesn't state it in the law,
20 there's still the Constitution. And I would go back to what
21 the Fifth Circuit did. It's a similar case here in OCA. The
22 Fifth Circuit in OCA-Greater Houston said that law is
23 preempted, which is exactly what occurred here.

24 THE COURT: Okay. Why don't you look at your note.

25 MR. SOUSSI: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. SOUSSI: Your Honor, additionally, Your Honor,
3 and that's to your question, right? We're talking today about
4 conflict preemption, which occurs when a state law creates an
5 obstacle to the accomplishment and execution of the full
6 purposes and objectives of Congress. That's exactly what
7 Senate Bill 2358 does here and that is exactly what the Fifth
8 Circuit struck down in OCA-Greater Houston, and to the multiple
9 courts that we cite to in our brief.

10 Like I said, federal courts have shown little
11 tolerance for any narrowing of Section 208.

12 THE COURT: Go ahead.

13 Have you looked at your note?

14 MR. SOUSSI: Yes, Your Honor. Yes, yes, yes.

15 THE COURT: Now go ahead. Is there another part to
16 your argument?

17 MR. SOUSSI: No, Your Honor.

18 In conclusion, we ask this court to grant this
19 preliminary injunction because the Fifth Circuit, the text and
20 the purpose are all clear that Senate Bill 2358 impermissibly
21 narrows the voter's choice and we ask you to rule for this
22 injunction before the law goes into effect.

23 Thank you, Your Honor.

24 THE COURT: All right. Thank you.

25 All right. Mr. Miracle, I see that you are rising to

1 address the court. So then I suppose you are going to be the
2 spokesperson for the defense.

3 MR. MIRACLE: That's correct, Your Honor.

4 THE COURT: Are you ready to go forward?

5 MR. MIRACLE: Yes, sir, I am.

6 THE COURT: All right. Go ahead.

7 MR. MIRACLE: Your Honor is obviously well versed in
8 the papers and so I think it would behoove me to address some
9 particular points that counsel opposite and you discussed. But
10 I would like to start with standing.

11 But before I do that I would like to emphasize with
12 respect to election integrity, that is one of the state's
13 highest duties, to protect the state's election integrity. The
14 Constitution has reflected that over and over in the case law
15 that grant states broad policymaking in this arena.

16 With that in mind, the legislature passed and the
17 governor signed in March of 2023 the bill that we're here
18 before today, S.B. 2358, which is a ballot harvesting bill.
19 And that is defined by this bill as a person shall not
20 knowingly collect and transmit a ballot that was mailed to
21 another person. So on its face it's confined to those
22 particular issues. It does not address any other part of
23 Mississippi Election Code. Whether the absentee balloting or
24 any of the framework of Mississippi's election code, that is
25 what it's addressed to.

1 As the court has already identified, it creates a
2 number of broad categories of persons who are exempt from this
3 provision. And we can talk about -- I would like to talk about
4 a little bit later the definitions and what they may encompass
5 and how they integrate with Section 208.

6 But we start with that backdrop, that this is an
7 election integrity bill and the state has a broad interest in
8 protecting that election integrity.

9 THE COURT: Mr. Miracle.

10 MR. MIRACLE: Yes.

11 THE COURT: Oftentimes when a measure is submitted to
12 the court to restrain or to emphasize some particular right,
13 especially relative to voting, there is a section that's
14 spelled out what the violations have been.

15 Is there such a section here?

16 MR. MIRACLE: That have pointed out what the
17 violations have been?

18 THE COURT: Yes, that voter or ballot harvesting has
19 been a widespread problem.

20 I didn't -- I don't recall seeing something on that
21 in the briefs. Is this considered to be some widespread
22 problem in Mississippi on ballot harvesting?

23 MR. MIRACLE: What I would say to that, Your Honor,
24 and I would be careful in characterizing from my point of view
25 whether it's widespread or not, but I certainly think over

1 the -- over the last several election cycles that has been a
2 concern with respect to -- and I think the general
3 understanding of ballot harvesting is when somebody comes in
4 mass and collects a number of ballots and transports them and
5 is coming in contact with individuals. Those may be people
6 that are completely unconnected with the voter.

7 I think, generally speaking, and now generally
8 speaking I'm saying this because, to answer your question
9 directly, that is not encompassed in the bill. There is not a
10 finding, per se, with respect to the question that Your Honor
11 is posing.

12 But what I would say is that with respect to this
13 particular issue, there is a concern, and this goes to the
14 state's protecting the election system from any type of abuse
15 in this regard.

16 Now obviously the type of plaintiff that's before the
17 court today, you know, and the assister who has put
18 declarations before the court today may not fall in that
19 category. And I think the court has already alluded to or at
20 least is cognizant of, that these individuals probably fit
21 within the exemptions that are within S.B. 2358.

22 It's the people that are not encompassed within this
23 that the ballot harvesting prohibition is obviously geared to,
24 from the integrity standpoint of our state's elections,
25 designed to address.

1 Is that responsive to Your Honor?

2 THE COURT: It is.

3 And to go on a bit further, I see ballot harvesting
4 as a political evil whereby one person or more who is committed
5 to that particular practice collects ballots from persons who
6 are of the wrong opinion, that the harvester is going to
7 faithfully deliver those ballots to the appropriate voting
8 precincts, untouched, unchanged, to reflect what the original
9 person, voter, has chosen. But nevertheless, that choice is
10 changed by the harvester, and thus skews the intent of the
11 person who is the voter as well as provides an improper vote as
12 a result therefrom.

13 So I went back through the papers and I was looking
14 to see if anywhere in the papers this particular circumstance
15 has been a circumstance married to Mississippi in any sort of
16 way. And unless I missed it, I didn't see where there was
17 discussion on that.

18 MR. MIRACLE: Your Honor is correct as to the latter
19 point, that there was no particular discussion. I think one of
20 the issues that's always problematic with respect to voter
21 fraud or voter integrity or the issues that Your Honor is
22 addressing is identification of when those issues arise. And
23 certainly when particular instances of voter fraud, whatever
24 they may be, whether it's ballot harvesting or any type of
25 voter integrity issues that would impact the types of things

1 Your Honor is discussing about undermining the integrity of
2 that vote.

3 But I would say, Your Honor, that they are -- that
4 can be challenging to identify unless there are particular
5 instances. But I don't think that proves -- the negative
6 doesn't prove that it's not a real risk, that it's not an
7 emerging risk. And it's not something that under the state's
8 broad authority to protect the integrity of its elections that
9 the legislature is powerless in this arena to ensure that
10 individuals who cast their vote, that it is in fact delivered
11 and it is in fact transmitted to the place where it was
12 supposed to go.

13 So I think this encompasses -- I mean the legislature
14 would not be doing its job if it were not always looking for
15 particular areas that are emerging that become problematic,
16 whether it's in other jurisdictions. But this is a, this is a
17 policymaking decision that the legislature has made and the
18 governor has signed for the very reason that Your Honor has
19 pointed to. So once that -- and it's targeted to those two
20 particular issues of collection and transmission. That point
21 at which the voter thinks that they have actually, you know,
22 finished their, their vote, but once it's transmitted to
23 somebody else, they, they don't, they don't know where, where
24 it reaches its final destination or not.

25 So the absence of any of those instances that Your

1 Honor's asking about certainly I do not think causes any
2 concern from a legislative and policy standpoint in addressing
3 what is a known evil, as Your Honor -- to use Your Honor's
4 term, when a vote can be undermined in the final stage of the
5 process by collecting it and transmitting it, and maybe it
6 never reaches its destination. And how does the voter ever
7 know? How does the voter know, and how does the state, the
8 state election machinery ever know? And that may make what
9 this particular issue is so nefarious from that standpoint of
10 detection.

11 So this is a policy and a legislative policy decision
12 that the legislature has, has adopted to further try to ensure
13 the election integrity process with exceptions that are clearly
14 sufficient and clearly for the individuals that are named here
15 before this court to, to be satisfied that they can rely on and
16 use the people that they're using. Because I guess at the
17 appropriate time we can discuss the exemptions, but on the one
18 hand they want to define caregiver so narrowly that it excludes
19 virtually anybody -- you know, particularly their plaintiffs
20 where the plaintiffs are assisters, they're trying to create
21 this very, very narrow, well, we don't know if that person
22 fits, or we don't know.

23 I think it is not a defined term. That is certainly
24 the case. But the court knows how to, in instances where terms
25 are not defined, the court can handle that. The court can --

1 there are rules for that. There is one identified definition
2 in our papers. That is one. There are others. But what I
3 would say to that, Your Honor, is with respect to the
4 individual plaintiffs before that court, whether you use the
5 exemption or the definition that is in our papers or whether
6 the court looks at other generally accepted definitions of
7 caregivers in our society, I think the claims of the plaintiffs
8 fall by the wayside, and I think they comfortably meet that
9 definition.

10 And we'll talk about the organizational and
11 associational standing and how that relates, but I want to make
12 that point clear, is that whether -- whether the court looks to
13 the definition that we have proffered in our papers or other
14 definitions, I think -- I think that satisfies the inquiry
15 here.

16 And what I would say with respect to people that are
17 in long-term care facilities or other facilities, I don't think
18 it's a genuine argument to say we're not sure whether people
19 that work in those facilities are caregivers.

20 Now if I misunderstood the argument, I apologize.
21 But to say that we don't know people who are taking care of
22 people in institutional settings, whether it's a hospital, a
23 long-term care facility or whatever the palliative care
24 facility may be, I think it strains the argument to say we
25 don't know whether "caregiver" would be encompassed.

1 So with respect to the definitional exemptions in
2 2358, I think they certainly satisfy Section 208's mandate.

3 And what I would also say, Your Honor, is with
4 respect to that, to the extent we're arguing or we're
5 dissecting definition, I think that proves the point that we
6 make in our papers, that Section 208 does not have the
7 categorical effect that the plaintiffs have proffered. They
8 have said that you can choose anybody, full stop, with the
9 exception of the employer or the union representative
10 exemption. But to the extent we're talking about definitions,
11 and we don't know if we can meet those definitions, that's a
12 whole nother, that's a whole nother question.

13 Their claim is, under Section 208, it is unfettered,
14 but for the way they read 208. But other than that, their
15 claim is it is unfettered, we can select anybody.

16 And I think the fact that we're discussing how these
17 exemptions apply shows that the states have some latitude here
18 in crafting these, these exemptions to meet the purposes of
19 Section 208, to make sure that every voter that should have --
20 every voter's vote is not only marked but cast as it should be
21 as it was intended.

22 And what I would say, Your Honor, with respect to the
23 scope of 208, the legislative history, and Your Honor's
24 correct, it does not speak specifically to preemption. But
25 with respect to this unfettered view of 208 that the plaintiffs

1 have, the legislative history actually supports the state's
2 view on this, as 208 not being unfettered in the manner in
3 which the plaintiffs read it.

4 And I would just quote, and this is in our papers,
5 but I would quote that the committee intends the voter
6 assistance procedures -- I'm sorry. State provisions would be
7 preempted only to the extent that they unduly burden the right
8 recognized in this section.

9 Now, I read that as that means the state has
10 latitude. That means the unfettered categorical position of
11 the plaintiffs about what 208 means, I think we have to take
12 208 at its face value. But the fact that the committee, the
13 Senate Judiciary Committee, said provisions would only be
14 exempted to the extent that. That, by my reading, means not
15 everything is preempted. And the view here is anything the
16 state does that is not the way they read 208 is preempted.

17 So I don't think the legislative history supports the
18 argument for the reading that they're providing, Section 208.

19 THE COURT: Yes, you're correct. You did make that
20 argument, you know, at more than one place in your brief, that
21 by that language this court should understand that there is not
22 wide preemption even as we use the term, but that the states
23 still have some authority and the states still have some right
24 to control this election so long as it's not in conflict with
25 the national law on the point.

1 But let me return to another point, and that is this
2 one. This is in essence a criminal statute, would you agree
3 with me?

4 MR. MIRACLE: It is a misdemeanor, and it's actually
5 contained in the election code, so it's not a separate -- but I
6 agree with you, it is.

7 THE COURT: Yes, it's not --

8 MR. MIRACLE: It has criminal penalties. It's part
9 of the voter intimidation statute in the election code. So it
10 is married to any act under the election code that would be
11 encompassed within voter intimidation.

12 But to your question, I agree with you, there are
13 misdemeanor penalties attached to this.

14 THE COURT: And a misdemeanor is a criminal matter.

15 MR. MIRACLE: Yes, Your Honor.

16 THE COURT: So then it then would have a criminal
17 penalty attached to a violation here. And while the
18 misdemeanor is not a felony, nevertheless, it is a misdemeanor.
19 And of course a misdemeanor on one's record can have dire
20 consequences even though just a misdemeanor.

21 But this state statute would provide for conviction
22 of a misdemeanor. And when a statute provides for some
23 criminal outcome, the courts are required to take a harder look
24 at that particular matter to determine whether the contents of
25 the statute unnecessarily chills the enthusiasm of those

1 affected. So inasmuch as this statute provides for a
2 misdemeanor, then we would assume that persons who wish to
3 exercise rights or activities that might be deemed to be in
4 conflict with a state statute would have to be cautious as to
5 whether they fit the definitions of those who can act in
6 accordance with the statute. Would you agree with me on that?

7 MR. MIRACLE: I would agree with you on that, Your
8 Honor. As I would also say within the election code as to any
9 manner of ballot tampering or any other activity that could fit
10 within that statute, so I would say it's not only just this
11 particular activity but within the existing framework of the
12 Mississippi code, there are certainly activities which would
13 violate and constitute a misdemeanor. So --

14 THE COURT: Well, I --

15 MR. MIRACLE: I agree with the point Your Honor is
16 making, though, certainly.

17 THE COURT: And I'm going further, because on this
18 particular matter one who wants to be of assistance to others
19 would have to read this statute carefully to determine what the
20 definition of caregiver would be, and also to try to look at
21 what exceptions are allowed for that person to act.

22 Would you say that that might have some chilling
23 effect upon those who wish to assist, unless they know for a
24 fact that they would not be prosecuted?

25 MR. MIRACLE: My answer would be that with respect to

1 the relationship here, and I think this is important, that if a
2 person has been providing this type of assistance to the
3 examples that were cited by counsel opposite, for the assister
4 and the plaintiff, I think it's reasonable to believe that the
5 people that are providing that type of assistance, I mean, and
6 I think that's where trying to define "caregiver" too narrowly,
7 I mean it can't be unfettered either, but defining it too
8 narrowly. But I think that the relationship between the
9 parties should be a guidepost there in aiding a person to say,
10 I regularly assist this person, you know. So for the
11 plaintiffs that are before the court that have submitted
12 declarations, you know, the court has something it can look at
13 and say, you know, is it reasonable to assume that those people
14 who have been providing this service for these particular
15 people who cannot -- or who need assistance because of their
16 physical condition, there's a relationship there that -- that I
17 think would be a guidepost to give aid to the person to say, I
18 regularly do this or I have a relationship with this person.

19 And I think, you know, that's what underpins
20 Section 208. And I thought it was interesting when counsel
21 opposite said, you know, random person is okay, for example.

22 Well, you know, if you go back to the legislative
23 history, one of the legislative histories, you know, talks
24 about having this trusted relationship so that there is not a
25 possibility that the person requesting assistance is going to

1 be taken advantage of.

2 And so here again this notion of any random person,
3 you know, that in and of itself, when counsel opposite talks
4 about the text and the case law and the purpose, well, that,
5 that's inconsistent with the purpose to say I can have any
6 random person who I have no relationship with or no trust, I
7 mean that goes against what Section 208 certainly was trying to
8 achieve.

9 THE COURT: Now --

10 MR. MIRACLE: To answer the court's question, I think
11 that relation --

12 THE COURT: Mr. Miracle. I agree with your saying
13 that this is another way of looking at it, but what about the
14 person who has been in this position for quite a while as one
15 of the persons mentioned by Mr. Miracle has been, and that
16 person has a question whether she is targeted for prosecution,
17 or would be. How does she get to answer to that if she can't
18 look at the statute and make that determination right off at
19 first blush, to see the definitions as to whether she fits
20 within those definitions?

21 MR. MIRACLE: Well, I think that's always an issue
22 with every law that is passed where somebody has to look at it
23 and determine whether or not they fall within it.

24 Certainly we're here before the court today with this
25 particular issue that's now been raised, this law has not gone

1 into effect yet, and this court may have the opportunity to, to
2 shed light on based on statutory construction, you know, what
3 the parameters of "caregiver" may be, so we are, we are in a
4 posture currently with the plaintiffs bringing this to the
5 court as it has that the court I think, based on the way the
6 parties have framed the issue, the court has an opportunity to,
7 to apply statutory interpretation and statutory construction
8 when undefined terms are present, to provide some of that, that
9 guidance, because we're now here in the form of a lawsuit
10 before this goes into effect on July 1.

11 So I think this makes it specific as to how somebody
12 may know as to how the court views how it applies what that
13 definition means within the context of 2358. And then I think
14 like other laws you certainly have to use your judgment as to
15 whether or not you fall within those.

16 Again, I think -- I think if you're a -- if you're
17 a -- if you're the, quote, random person who shows up and, you
18 know, maybe that's a little bit different story, and I think
19 we'll get to some of the standing issues on this, Your Honor,
20 because I mean that's one of the problems here. This is a very
21 individualized inquiry.

22 And so you're being asked via organizational or
23 associational standing to, to measure how this would be applied
24 to all these different individuals. As you can see from the
25 declarations that were submitted by the individuals that are

1 here before the court, they have individual circumstances, and
2 of course the plaintiffs wanted to make the court aware of what
3 those circumstances were, but just as their circumstances may
4 be different, that's what -- that's why this, this -- you know,
5 the court is familiar with the phrase standing is not dispensed
6 in gross from the Daimler Chrysler and long line of Article III
7 standing cases, certainly that's one of the particularized
8 issues where Your Honor is asking about how is somebody going
9 to know? You know, if they are a random stranger and they
10 knock on someone's door and say, Do you need assistance with
11 your, with your ballot? You know, I would say there is a
12 continuum there of that person. But if you have a
13 relationship, an ongoing relationship with somebody and you
14 have been providing that, that assistance, then I think that's
15 a different question as well. I think that changes the court's
16 inquiry about the -- how is the person supposed to know?

17 THE COURT: So then are you saying, Mr. Miracle, that
18 if this court chooses to uphold the statute, the court should
19 write a detailed opinion to explain to the public who's
20 included and not included?

21 MR. MIRACLE: No, Your Honor, I don't mean to suggest
22 that. But I think given the fact that the issue has been
23 raised to the court by the plaintiff that this is an undefined
24 term and the law provides a framework in how, how terms can be
25 construed. I certainly think that the definition that has been

1 included in the state's paper is one view. There are other --
2 there are other views out there. That was the American Medical
3 Association's view of caregiver. So, no, we're not asking this
4 court to write the statute or rewrite the legislation but to
5 apply the term "caregiver" in its ordinary meaning, which is
6 what the law requires in an undefined term.

7 THE COURT: Are there other terms within the body of
8 this law that need to be clarified?

9 MR. MIRACLE: I would say "caregiver" has certainly
10 drawn the most. I did hear reference to a distant family
11 member. I think that strains the interpretation. If you're
12 saying I'm second or third, you know, family member removed, I
13 mean "family member" I think is a reasonably well known term,
14 and so the extent to which you may be related I don't think is
15 certainly problematic.

16 And then I would say with respect to "household
17 member," I think that is using ordinary, common principles of
18 what a household member, that -- you know, that doesn't have to
19 be a relative, so that phrase in and of itself has quite a
20 broad meaning. We haven't discussed it much. "Caregiver" has
21 gotten most of the attention. But a family member is a fairly
22 particular, I think we can all agree, how you would look at
23 that and how you would determine that. But you could be a
24 household member who's under the roof of that household who may
25 not be a family member before you even get to caregiver.

1 THE COURT: Well, let's talk about family member for
2 a moment.

3 MR. MIRACLE: Sure.

4 THE COURT: How many persons would be under that
5 umbrella, first cousin? Second cousin? Third cousin? How far
6 down do we go for a family member?

7 MR. MIRACLE: Using an ordinary definition of family
8 member, I don't know that there is a limitation. I don't know
9 that there is a cutoff that I could supply to the court. I
10 think if you can determine that you are a family member related
11 in the manner in which the court is suggesting, I certainly
12 think you would fall into the family member category. I don't
13 know -- the legislature certainly didn't include it. In
14 including "but limited to," they did not seek to limit in that
15 definition how far down the family tree one should go to
16 determine that.

17 So I would suggest that a family member should be
18 taken at face value in terms of whatever that family
19 relationship may be.

20 THE COURT: So then you would expect if the court
21 were to uphold this law, that the court would speak to these
22 matters and provide some sort of interpretations and some sort
23 of definitions to guide the public?

24 MR. MIRACLE: Beyond, Your Honor, with respect to say
25 family member, I think other than the court were to -- which we

1 certainly respectfully ask this court to do, uphold this
2 statute, I don't know that the court has to undertake a
3 detailed definition of "family member" or "household member."
4 Again, "caregiver," we've talked about "caregiver," but I would
5 suggest to the court that a term like "family member," unless
6 the legislature has said this includes, you know, and
7 identifies the particular family member, and it has an
8 exhaustive list of what constitutes a family member, I think
9 "family member" has to be read in a broader -- in a broad sense
10 of how that term is generally accepted.

11 So I don't think the court has to undertake its own
12 independent research about genealogical, you know, connections,
13 but "family member," as that term is commonly understood
14 through available sources as our case law teaches us about how,
15 how courts view undefined terms, I don't think "family member"
16 and I don't think "household member" would require the court to
17 do that. I think the court has latitude to look at "caregiver"
18 and how that phrase is used in settings to determine
19 particularly with respect to these plaintiffs before this
20 court, the individual plaintiffs, how that, how that
21 interact -- how their cases interact with Section 208 and S.B.
22 2358, and I think they comfortably fall within those
23 categories.

24 THE COURT: When I went on the bench eons ago, I
25 found I had a whole lot more cousins than I knew. So they were

1 addressing me as "cuz."

2 MR. MIRACLE: Understood.

3 THE COURT: And I was trying to look them up.

4 MR. MIRACLE: Understood.

5 THE COURT: And if I had listened to them, that tree
6 was huge, especially around Christmas.

7 MR. MIRACLE: Understood, Your Honor.

8 I think going back to the, to the reason for 208 and
9 this notion of a true person sort of underpinning this, I can't
10 speak and I would not be truthful to the court if I said I
11 could, you know, if somebody said I'm your third or fourth
12 cousin and you're a total stranger, we never crossed paths and
13 somebody's representing to the voter that they're my third --
14 they're the third cousin, then, you know, I don't think we can
15 speak to that.

16 What I would say, though, is that Section 1 of 2358
17 talks about a person knowingly doing this. So if somebody is
18 coming to the voter and misrepresenting who they are, let's
19 just use "family member" as an example, then I don't think they
20 should have any expectation of whatever may come of them with
21 respect to potential penalties under the statute if they're
22 making a misrepresentation to the voter about who they are for
23 purposes of transmitting or collecting that ballot.

24 THE COURT: Two other matters occur to me on this
25 same topic.

1 First of all, you are saying that -- or if you are --
2 that you are trusting that two other defendants who represent
3 the judiciary here in this lawsuit would have to be trusted to
4 do the, quote/unquote, right thing? Because if one of the
5 county attorneys were to charge an individual with ballot
6 harvesting and that county attorney takes the position that
7 that individual is not a family member or is not one of these
8 other persons who fit within the statute, then the charged
9 person would have to contest the charges if that individual has
10 not to that point intimidated and chose not to indulge in the
11 ballot assist. But if the person decides to go forward with
12 assisting, then if the person is charged is not a mere fact of
13 looking up the genealogical chart, as you mentioned, but
14 instead that person could stand before the altar of criminal
15 justice and risk being convicted of a misdemeanor after a jury
16 trial, if this matter is then pushed to a jury trial, because
17 there is no understanding as to what the definition would be to
18 exempt that individual that is listed in the statute, if that's
19 the case.

20 So why wouldn't that chill persons who would want to
21 exercise this right to assist into not assisting? Because the
22 option might be that the individual could be charged and then
23 face the prospect of a conviction after a jury trial. So why
24 wouldn't that all add up to a chilling effect provided by the
25 lack of specific definitions in the statute?

1 MR. MIRACLE: One, the one response I would have is
2 if we're using "chilling" in the context of a legal claim and
3 if the court means something differently, then I certainly
4 apologize for what I'm about to say, but the answer I would
5 give is if we're talking about chilling in the First Amendment
6 context with respect to the voter assistance, we don't have a
7 First Amendment claim here before you.

8 The assister plaintiffs are not making a First
9 Amendment claim that this statute is vague, applying the
10 principles of vagueness under the First Amendment. So they're
11 bringing a completely, you know, statutory Section 208 claim.

12 So that would be -- my legal response to that would
13 be if we're talking about chilling in the First Amendment
14 context, we don't have a First Amendment claim here before the
15 court.

16 But I appreciate Your Honor's question about the
17 natural outcome of somebody who may be subject to the penalties
18 under the, under the penalty section of this statute.

19 I presume the reason that the plaintiffs brought suit
20 and named two county prosecutors was for that purpose. They
21 certainly have prosecutorial discretion. That is, certainly I
22 would not speak on behalf of either of the two county
23 prosecutors that are named in this case and how they would view
24 that in a particularized case. And I do think that also
25 factors into what the particularized facts are, so I think it

1 makes it challenging from a, from a hypothetical standpoint to
2 say how that would get resolved.

3 But, again, if you're a, if you're a person who has
4 not been sought out and you're going to the voter, I think you
5 have to -- if you are aware of the penalties, I think you have
6 to -- or you have to -- you have knowledge or you have, you
7 know, constructive knowledge that there are penalties for voter
8 fraud and things of that nature, and you're a stranger to the
9 transaction, I think that that's one equation.

10 I think what the -- what I sense the court is driving
11 at is a continuum of facts where it may be easier to assess
12 somebody's relationship if it's continuing and ongoing versus
13 maybe there is a continuum of whether that relationship is not
14 as well established. And I would simply say that's an
15 assessment that, from the criminal standpoint, a county
16 prosecutor with the facts of the case, like he or she would any
17 other case, have to assess whether or not there's been a
18 violation of the statute.

19 THE COURT: So then we'll back up to the lick-log of
20 what exactly does the statute provide as to whether the statute
21 itself is clear enough that one who wishes to assist can depend
22 on the language of the statute to show that he or she has not
23 violated, as opposed to a statute which has a broad description
24 which might have some vagueness as to whether there has been a
25 violation.

1 I asked earlier that if I were to uphold the statute,
2 would you be asking the court to do a detailed opinion that
3 would set out the court's reasoning with regard to the
4 integrity of the statute itself but also as to how it should be
5 interpreted?

6 But then I thought about this term "judicial
7 activism," which is a term which describes where a judge goes
8 beyond a statute, beyond the legislative history of the statute
9 and thus rewrites the statute, which is in so many, many
10 circles frowned upon as invading the arena of the legislature
11 and that the court shouldn't go that far but only deal with the
12 statute as written and interpret it as written.

13 So then if that be the case and if the court were to
14 be festive about any particular criticism under judicial
15 activism, then the court would have to be bound by just the
16 wording of the statute, and maybe in some instances say that
17 this word should be taken in its common sense and everyday
18 usage but other words might not get the same enjoyment.

19 Thus are you saying that the court should supply a
20 definition so that the public would have some idea of who is
21 included and who is excluded?

22 MR. MIRACLE: The way the issues are framed in this
23 lawsuit, the plaintiffs have challenged 2358. We have
24 responded that the statute provides exemptions. They have
25 responded in kind and said those, those exemptions are not

1 defined.

2 We have proved what are ordinary interpretive tools
3 for the court to apply that to the extent they're undefined,
4 then the court can use interpretive tools, as the case law
5 says, given its ordinary meaning. I don't think that requires
6 the court, and I agree with what the court just said about
7 rewriting the statute, and that's certainly not what I am
8 suggesting, or if I have said anything to suggest that, I
9 certainly will say categorically we're not asking the court to
10 rewrite the statute.

11 I think the legislature chose the terms it chose. We
12 think they're easily susceptible to interpretation. The
13 plaintiffs have said they're not defined and the law provides
14 the court with a mechanism to apply ordinary meaning to those
15 terms to determine whether or not they satisfy, otherwise
16 satisfy the requirements that the court is being asked to
17 address.

18 So I think it's a much more narrow inquiry than this
19 broad undertaking that the court would have to do this. I
20 think just like any other case where the court is presented
21 with a term that does not have its own legislative definition,
22 the court has tools at its disposal to say "the ordinary
23 meaning of caregiver or the ordinary meaning of family member
24 is this, therefore under the defendant's view of this case I
25 find..." That's what I am suggesting would be the proper, from

1 the state defendants' point of view, way to view the
2 interpretive canon, the interpretive analysis of this.

3 But it's in the confines of the plaintiffs have said
4 these aren't defined, we don't know whether they apply to us or
5 not. And we have offered a definition that's available. But
6 the case law supplies how a court addresses undefined terms.
7 And so that's where I would leave that, but not suggesting that
8 the court could rewrite the statute in its own, in its own
9 accord. I'm not suggesting that.

10 THE COURT: The plaintiffs have submitted three major
11 examples of where there could be an impact upon one who wishes
12 to assist. Those three examples, are they covered under the
13 statute?

14 MR. MIRACLE: I think a fair reading of the statute
15 is they are covered.

16 THE COURT: All right. Would you describe each one
17 and why neither one of those persons should fear prosecution
18 under the statute?

19 MR. MIRACLE: And with respect to the -- we're
20 speaking of the assisters that are providing, currently
21 providing assistance to the voters. Is that --

22 THE COURT: That's correct. The --

23 MR. MIRACLE: I'm sorry.

24 THE COURT: Go ahead.

25 MR. MIRACLE: Any response would largely be that

1 those details, the relationship that exists with respect to
2 those individuals, they have given the court particularized
3 situations where they have been providing that assistance.
4 They're -- to my understanding, they would continue to provide
5 that assistance. There is a known relationship between these
6 parties. So I think for those reasons alone, I think they,
7 they would, under a fair reading of the statute, be covered.

8 THE COURT: Then if a prosecuting attorney, not as
9 reasonable as the two who are being sued here, had charged a
10 person fitting that same category, are you telling me then once
11 charged that a defendant could file a motion to dismiss, which
12 on his filing to be granted under the statute as clear point of
13 law that the prosecution is unwarranted?

14 MR. MIRACLE: As much as I'd love to give the court a
15 categorical answer to that, I think the hypothetical is such
16 that I simply could not, given whatever the facts of those
17 cases would be, and the discretion of the prosecutor, I mean
18 I -- that's just, that's just -- if I said anything else, I
19 don't think I would be giving the court a fair answer.

20 So I --

21 THE COURT: What about the lady who was assisting the
22 amputee? What about her, if she was charged?

23 MR. MIRACLE: Based on the facts that are before the
24 court, I think she likely falls within the term caregiver.

25 Now I am not -- I am not the prosecuting attorney

1 vested with this, with this charge, but based on the
2 information that's been provided to this court and based upon a
3 fair reading of what the term caregiver would be, and I don't
4 think it's a fair characterization to define caregiver as
5 narrowly as counsel opposite would have the court want to view
6 to try to categorically exclude the assister for the individual
7 plaintiffs before this court.

8 So I think, I think a fair reading, though, would
9 encompass, in my reading -- now, I am not the prosecuting
10 authority, so I have that limitation. And I think it's only
11 fair to make that representation to the court. But I think
12 it's a fair characterization of the terminology and the facts
13 that the court has presented to it, that they would, they would
14 fit that definition.

15 THE COURT: Would you see that as a question of law
16 and a question of fact?

17 MR. MIRACLE: If the person were charged and came
18 forward and said I'm a caregiver within the meaning of this
19 statute, then that would be a question, that would be a
20 question of law, I think.

21 THE COURT: Not a question of fact, in addition?

22 MR. MIRACLE: It may be a question of fact.

23 THE COURT: And then if it is a question of fact, who
24 would submit the fact on behalf of the charged individual?
25 That person would, apparently. And therefore the prosecutor

1 could, on the other hand, submit facts favorable to the
2 prosecution. And if it is a question of law, but a question
3 nevertheless, that means that the court has to make a
4 determination on the legal end. But if the court did not make
5 that determination, then on the factual part of the prosecution
6 the defendant and the prosecutor would have to submit that
7 matter to a jury. And that means that someone who is charged
8 with being a, quote/unquote, caregiver might have to go to
9 trial on that particular matter.

10 And if that's the case, and anybody else heard about
11 it, it would seem to me that might be a chilling effect on
12 somebody else who want to serve as a caregiver who can point to
13 anything specifically in that statute that says that they are
14 exempt, other than a term that might be construed as broad or
15 vague.

16 What's your response to that?

17 MR. MIRACLE: Again, Your Honor, I don't think
18 that -- I mean any law that has a criminal element to it has
19 some level of definition to it. So I don't think that the fact
20 that this particular law has definitions in it that have
21 misdemeanor penalties attached to it makes it any different
22 than any other penalties.

23 And, again, I reference this particular provision of
24 the code is found within the election codes. So it is
25 particular to election type activities.

1 But there is no way in any definition or in any, any
2 sense that I can stand here before the court and anticipate
3 every factual situation that may arise other than, again, the
4 people that are before this court with particularized facts
5 that say I've been doing this, I have this relationship.

6 If they want to say I'm not a caregiver, then that
7 may be a choice they make for whatever reason, but I certainly
8 think if somebody has been historically providing a service to
9 somebody who otherwise is doing it out of the goodness of their
10 heart and trying to make sure that everyone's voting, you know,
11 I certainly think the facts do matter.

12 Let me, let me clarify, if I said, you know, this was
13 an issue of law only, but, you know, with the plaintiffs before
14 this court, I think they have demonstrated that they have been
15 doing this, they have been assisting voters, and therefore that
16 certainly should inform whether it's this law or any other law
17 that we as citizens are subject to, have to -- have to assess
18 whether or not we may be encompassed within that.

19 But I certainly can't speak to every hypothetical
20 that may come along, and every individual who may not be in
21 exactly the same situation that these plaintiffs are, that -- I
22 simply couldn't make that representation to the court about how
23 that would play out 100 percent of the time.

24 THE COURT: And I want to be sure I understand how
25 far you're going on this point.

1 Are you saying that the individual plaintiffs here
2 would not be subject to the penalties provided by this law?

3 MR. MIRACLE: Well, Your Honor, because that -- that
4 goes beyond -- that is up to people who have their own
5 independent jurisdiction. And again I'm assuming that's why
6 the two county prosecutors were named here today, speak to
7 that. But if the court's question is could I categorically say
8 somebody would never do something, I simply couldn't make that
9 representation honestly to the court.

10 THE COURT: No. I'm just asking with regard to those
11 persons who are named herein as plaintiffs, where their
12 activities have been described, if those activities are the
13 ones brought to the attention of the other defendants in this
14 case, the two defendants here who are county attorneys, are you
15 saying categorically they should not be charged?

16 MR. MIRACLE: My position is that based on the
17 evidence that they've submitted, I think they would meet the
18 definition of caregiver as that term is properly defined.

19 THE COURT: Okay. So then you would have no sway, no
20 persuasion power, with regard to those two county officials?

21 MR. MIRACLE: No, Your Honor.

22 THE COURT: And they would still be able to exercise
23 their own discretion?

24 MR. MIRACLE: I would think so, Your Honor.

25 THE COURT: Now then, you mentioned exemptions.

1 Twice you were ready to go into exemptions and twice I stopped
2 you.

3 MR. MIRACLE: Well, I think we have actually, through
4 that discussion, I think we have largely addressed the
5 exemptions, and they are, in the state's view, state
6 defendants' view, they are broad and they do encompass --
7 balanced with, but this is where it gets with the -- with our
8 primary difference of the legal issue here before the court
9 whether Section 208 is unfettered or whether Section 208 allows
10 states some latitude to protect the integrity of its election
11 process.

12 And, you know, we have several district court -- at
13 least two district court cases that have so held and are in our
14 papers, and so I know the court is aware of them. The Nessel
15 decision from 2022, that actually started in 2020. It went to
16 the Sixth Circuit on another issue, came back down and another
17 district judge then picked up the case and addressed twice --
18 the issue of Section 208 and voter assistance was actually
19 addressed twice by the district court in Nessel, once in 2020
20 and again in -- and as Your Honor is aware, there the court
21 said that states do have some latitude and that a reading of
22 the definite article/indefinite article analysis that the court
23 went through, and the legislative history evidences that there
24 is latitude for the states and they're not confined to the
25 interpretation that is being proffered by the plaintiffs that

1 states cannot -- you know, because really, under the state --
2 under the plaintiffs' view, these exemptions are of no
3 consequence.

4 Now, they would say there are no exemptions beyond
5 what Section 208 says. I mean that -- we have a vast
6 difference of opinion about what Section 208 means. So we have
7 the Nessel decision, which is clearly in accord with our
8 position that the states have that latitude, and then the Ray
9 decision was a district court case from Texas, 12 years before
10 Nessel, and it reached the same conclusion that states do have
11 this latitude and that a voter does -- voter assistance does
12 not mean anybody. I mean that's what the district court said
13 and the court there also relied upon the legislative history to
14 say states have latitude in this arena.

15 There are two state court cases which we cite in our
16 papers which were cited by the district court in Ray, which
17 both came to the same conclusion. So this is, this is not a
18 novel argument. This is not a novel idea that Section 208
19 has -- affords states some latitude and that the conflict
20 preemption is not absolute if a state tries to exercise some,
21 some discretion in this arena.

22 We obviously both address OCA Houston in our papers,
23 and that was addressed by counsel with respect to the
24 exemptions. I think we have a little bit of a different
25 interpretation of what OCA actually held. You know, while

1 counsel opposite said had the Congress wanted Section 208 to
2 say something in particular, they could have done so, well,
3 just so too could the Fifth Circuit have said that states are
4 not allowed to operate in this arena. That states -- what they
5 did say was Texas's statute impermissibly narrowed Section 208.

6 But I think it's interesting to note that the court
7 used the term "impermissible" in its opinion.

8 And to me impermissible denotes the fact that there
9 would be a permissible set of exemptions.

10 So this notion that OCA gives no breathing room
11 whatsoever and it has categorically closed the door on this 208
12 argument, that is obviously a position we do not agree with.

13 Counsel mentioned that it's a binding precedent. I
14 in no intention -- I'm not suggesting that OCA is not binding
15 precedent. It's binding for its purposes. But I don't believe
16 a fair reading of OCA -- the court did not say that a state is
17 categorically prohibited from exercising exemption. It just
18 didn't say that.

19 So I think -- I think that's what OCA stands for, and
20 obviously we have a difference of opinion about, about its
21 application here, but I categorically dispute that it
22 forecloses the argument we're making and the argument that has
23 been made by other district courts. At no time in the OCA
24 opinion did they, did they disavow the court's holding in Ray.

25 The response to that was, well, it's been overruled

1 by implication.

2 I think that's an argument that gets made when a
3 decision is still out there, that, you know, a later opinion
4 may touch on, but nowhere in OCA Houston did the court say, We
5 overturned the Ray decision. And Ray clearly stands for the
6 proposition that we're offering to the court today, that the
7 states, and particularly the State of Mississippi, have
8 latitude in this arena.

9 And again I think that supports the motion and
10 rejects and counsels against the argument being made that
11 Section 208 is unfettered the way the plaintiffs are reading
12 it.

13 THE COURT: I saw in the papers --

14 MR. MIRACLE: Yes, sir, Your Honor.

15 THE COURT: I saw in the papers --

16 MR. MIRACLE: Yes, sir.

17 THE COURT: -- that the number of absentee ballots in
18 Mississippi might approach the number of a hundred thousand.

19 Did you see that?

20 MR. MIRACLE: Yes, sir. In the papers, yes.

21 THE COURT: Okay. It was in the papers that are
22 before the court.

23 Do you agree with that figure?

24 MR. MIRACLE: If you would indulge me for one moment,
25 Your Honor.

1 THE COURT: Okay.

2 (Conferring discussion.)

3 MR. MIRACLE: Thank you, Your Honor.

4 THE COURT: All right.

5 MR. MIRACLE: So that number is, is approximately
6 correct; however, the vast majority of those absentee ballots
7 are in person and a much smaller percentage are mail-in.

8 THE COURT: So that brought up my next question of I
9 didn't see what percentage was attributed to assisted voting.

10 Do you have such a number?

11 MR. MIRACLE: No, Your Honor, we wouldn't have that
12 number.

13 THE COURT: Okay. Now then, I want you to look your
14 notes over because I know I interrupted you several times, and
15 I want to take a 15-, 20-minute recess, y'all let me know
16 you're ready to go back. Look your notes over and see if there
17 is something else that you want to submit to me that I stopped
18 you from doing by asking my questions.

19 MR. MIRACLE: And there would just be, I think, one
20 point I want to touch on standing, and those are a couple of
21 points that were raised by counsel opposite, and I think I'll
22 look at my notes, but I know I did want to address standing.

23 THE COURT: All right. Look at your notes.

24 And then, in addition, during this same recess
25 plaintiff can look over plaintiffs' notes and be ready to

1 submit any argument in rebuttal.

2 So I will be in recess. Let's just make it
3 20 minutes so you have ample enough time to take care of your
4 personal needs and also to look your notes over.

5 So make it 20 minutes, all right?

6 MR. MIRACLE: Thank you, Your Honor.

7 THE CLERK: All rise.

8 (Recess.)

9 THE CLERK: All rise.

10 THE COURT: Mr. Miracle.

11 MR. MIRACLE: Yes, Your Honor.

12 THE COURT: Do you have some other points you wanted
13 to raise?

14 MR. MIRACLE: Briefly.

15 THE COURT: Go right ahead.

16 MR. MIRACLE: Thank you, Your Honor.

17 I want to touch on the standing, although this is in
18 our papers, it's really in response to counsel opposite's
19 argument.

20 Under the view espoused with respect to Disability
21 Rights, under the theory they espouse, Disability Rights would
22 have standing in every single case involving an election
23 challenge, and I simply -- you know, the court is well aware of
24 Article III jurisprudence, and I think they still have to
25 demonstrate Article III standing for organizational standing

1 and for their associational standing.

2 You know, the problem with that is, is the court, as
3 we discussed today, that's a very individualized assessment of
4 these particular plaintiffs. So on the organizational
5 standing, again we've addressed this, but the diversion of
6 resources is what they cite in their declarations and they try
7 and point out that they are diverting resources from other
8 things.

9 Again, under the controlling law, you know, every
10 time a law is changed, an election law is changed, that does
11 not mean that an organization such as DRMS or the League of
12 Women Voters automatically has standing. We certainly think
13 that the diversion of resources that have been alleged do not
14 meet the operative standards for organizational standing.

15 And then on the associational front, again, this is
16 a -- this is a particularized type of a case where the -- that
17 the court has heard from declarations for particular plaintiffs
18 that may have situations, but to say, as Disability Rights did
19 in its papers, that Mississippi voters with disabilities will
20 be disenfranchised, that's a conclusory allegation, Your Honor.
21 I don't think that there is supporting evidence for that before
22 this court.

23 So we, we reiterate that we do not believe either
24 Disability Rights or the League of Women Voters who really only
25 said they've had to create some new literature. That's not the

1 type of diversion of resources that the Fifth Circuit or
2 district courts have applied. And those cases are in our
3 papers.

4 So with respect to standing, we do not believe the
5 organizational plaintiffs have met their burden for purposes of
6 Article III standing.

7 I wanted to hit very briefly the irreparable harm.

8 THE COURT: Hold on a second.

9 MR. MIRACLE: Yes, Your Honor.

10 THE COURT: You said that if, if every time there is
11 a change in the law where an organization had to change its
12 address or its approach, then there would be no boundaries to
13 the standing and everybody would always have standing.

14 That is an argument you spent some time on in your
15 brief. And you also addressed some other points of standing,
16 but let me remind you, I have read all of that.

17 MR. MIRACLE: Yes, sir.

18 THE COURT: And so I'm familiar with the arguments
19 you've made on those particular points.

20 MR. MIRACLE: Okay. Thank you, Your Honor.

21 THE COURT: And so there was one other thing I was
22 going to mention, but it will come back to me in a minute
23 because I got sidetracked on something else I just thought
24 about.

25 MR. MIRACLE: Thank you, Your Honor.

1 THE COURT: All right.

2 MR. MIRACLE: For completeness of the record, since
3 we're here on a preliminary injunction, I did want to make sure
4 we touched on the all the factors even though they're in our
5 papers. But I do want to, you know, end where I started, and
6 that's on the interest of the state here in ensuring election
7 integrity.

8 And so with respect to the equitable factors, and as
9 the court is aware, those merge, those last two factors merge
10 when the government is a, is a party. Clearly the public
11 interest here would be harmed if an injunction issues because
12 this is a ballot integrity measure for all the reasons we've
13 discussed. It is critical that every voter's ballot is counted
14 and every voter has that ballot transmitted to where it's
15 supposed to go. And I think, again, with respect to whether or
16 not we can detect fraud, you know, is how is a voter ever
17 supposed to know that their ballot was not transmitted where it
18 was supposed to go?

19 So this is clearly an indisputably strong and
20 important compelling interest on behalf of the State of
21 Mississippi and an injunction preventing it from instituting
22 measures that will continue to further election integrity is
23 clearly against the public interest.

24 So for purposes of our preliminary injunction
25 discussion, I did want to touch on that.

1 And finally, although we strongly urge the court to
2 deny the injunctive relief, I do want -- and again this was in
3 my papers -- I do want to touch on the scope of relief because
4 the requested relief here by the plaintiffs is exceedingly
5 broad. Not only do they want an injunction against 2354 --
6 2348 [sic], but they also ask that the Attorney General and the
7 Secretary of State be ordered to make certain statements. That
8 is certainly beyond any, we believe, any proper scope of an
9 injunction. Even if the court were to issue an injunction as
10 to Section 208 as to particular plaintiffs, certainly some
11 broad statement is -- would be beyond the bounds of Rule 65, we
12 believe, in terms of any appropriate injunctive relief.

13 And then, finally, that goes to the scope of relief.
14 And you've heard a lot today about these particular plaintiffs,
15 and it does appear that particular plaintiffs do matter. And
16 so the notion that this is sort of akin to a nationwide
17 injunction that gets talked about at the district court level,
18 well, this would be akin to a state-wide injunction where you
19 only have before you a couple of plaintiffs who we've discussed
20 and why we have said we think these particular plaintiffs have
21 met their, met their standing burden, and they would be covered
22 by the statute. But to issue this broad, sweeping injunction
23 that the plaintiffs have sought here today would certainly
24 be -- would be -- we believe would be inappropriate, and in
25 fact OCA, in the OCA case, the Fifth Circuit actually ended up

1 remanding that case for further proceedings based on the scope
2 of the injunction that was, was issued.

3 And so I would just wind this up by saying, Your
4 Honor, that the state has acted appropriately under
5 Section 208, it has crafted a statute that affords broad
6 exceptions, and we think it certainly meets the statutory
7 requirements of Section 208 for all the reasons we have said.
8 If the court were to entertain any injunctive relief, though,
9 it would have to be very narrowly tailored. It certainly --
10 the reason this statute was passed was to stop ballot
11 harvesting. So to the extent that that can only be curtailed,
12 if at all, if the court finds that there is some problem
13 relative to Section 208, it would have to be narrowly crafted
14 to only impact somebody who meets the requirements of
15 Section 208 with a disability or other qualifying event. But
16 this would have to be a very, very narrowly tailored
17 injunction, if at all.

18 We obviously again categorically reject the notion
19 that they have met their burden for primary injunctive relief.

20 Unless the court has any other questions, I want to
21 thank the court for your questions and indulgence in my
22 argument this morning.

23 Thank you, Your Honor.

24 THE COURT: All right. Now, counsel, for two-thirds
25 of his argument, Mr. Miracle had been very court reporter

1 friendly.

2 He had not transgressed as you had earlier when you
3 had got excited and had spat out a volume of words all at -- in
4 one sentence. And so Mr. Miracle had done great up until we
5 came back.

6 And so when we came back, then, seems like he caught
7 the disease that you have. And so then he was rushing, and I
8 don't know why he did so because I was not limiting him, just
9 as I didn't limit you, and will not be limiting you either.

10 So I would like that you couch your remarks as he did
11 when he first started.

12 MR. SOUSSI: Yes, Your Honor.

13 THE COURT: And consider my court reporter over here.

14 MR. SOUSSI: Yes, Your Honor.

15 THE COURT: Who is highly trained and competent at
16 what he does. And Fred has been with us for many a-years, and
17 so he has been doing a wonderful job because I've had a lot of
18 cases with him over the years, and he has always done really
19 magically when it comes to reproducing his record and getting
20 these matters out to me for further digestion by the various
21 courts and by the public.

22 So would you be so gracious as to think about my
23 buddy Fred down here, you know, because, you know, he came up
24 here from the coast. I've had a lot cases down in Hattiesburg
25 and the coast, and so that's where he and I have crossed paths.

1 But when I need somebody extra, then I do not hesitate to call
2 on Fred.

3 So here he is. And I don't want to scare him off,
4 you know, because Fred is a valuable friend and also a
5 consummate professional. So let's be kind to Fred.

6 MR. SOUSSI: Yes, Your Honor.

7 THE COURT: And just slow down. And I am not
8 limiting you on your time. So just take your time and go from
9 there.

10 I remember way, way, way back, probably before you
11 were born, when I was in grade school and I spoke rapidly. I
12 mean rapidly. And everybody was asking me to slow down. I
13 did, until I started trying cases as a lawyer, and then there
14 were some court reporters who were -- I think I caught them one
15 afternoon having a meeting, and I think I was the subject of
16 the meeting. Furthermore, I think that they were trying to
17 determine who was going to do the hit, you know, put a hit out
18 on me. Because they would ask me after the hearing to describe
19 certain words and to give the definition, be sure they had the
20 right word. Well, what made it all so difficult was at the
21 time we had a lot of people testifying who came directly out of
22 the hood speaking the highest level of Ebonics, and so
23 sometimes they didn't know the definition of these words; they
24 never heard them before.

25 You know, I remember one lady testifying about how

1 she had gone outside and crunk up the car. And the court
2 reporter looked over her shoulder at me like, What is crunk?
3 You know, well, I told her just hold on for a moment because
4 you're about to hear something else, because she said the car
5 went about 20, 30 feet and it became uncrunk.

6 And so then she had to know the definition of crunk
7 and uncrunk.

8 And I told her, well, it was real simple. You know,
9 you crank up a car, but if you cranked it up some time ago,
10 it's cranked. But if you cranked it up a long time ago you
11 crunk it up.

12 And then when the car start running, obviously it
13 became uncrunk. I can't understand what the problem is.

14 So I was constantly giving her a dictionary on
15 Ebonics, but also, back when I was trying cases, I was speaking
16 rapidly. I started speaking much slower when I became a judge
17 because then I recognized the harm and the pain I had caused my
18 court reporters.

19 And since we need to keep these people, then I was
20 trying to be sure that they recognized that I was court
21 reporter friendly. So help me in this endeavor, please.

22 MR. SOUSSI: Yes, Your Honor.

23 THE COURT: Okay. So just take your time and the
24 thought that you have, you will hang on to it. It won't go too
25 far. And then just go ahead and blast me with it later.

1 Okay?

2 MR. SOUSSI: Yes, Your Honor.

3 THE COURT: Now go right ahead.

4 MR. SOUSSI: Thank you so much.

5 Ahmed Soussi again on behalf of the plaintiffs.

6 Your Honor, Section 208 is clear. Any person -- or
7 any voter with a disability may be given assistance by a person
8 of their choice other than their employer or union
9 representative.

10 Conflict preemption occurs when state laws create an
11 obstacle to the accomplishment and execution of the, quote,
12 purposes and objectives of Congress. This is exactly what
13 Senate Bill 2358 does, and the discussion you had with opposing
14 counsel proves this, that Senate Bill 2358 limits more than
15 just a voter's choice on their -- a voter's choice.

16 Additionally, Your Honor, the Fifth Circuit is also
17 clear. They have already established that Section 208 is
18 preemptive when state laws impermissibly narrow voters' choice.

19 What's also important, Your Honor, are the cases that
20 the defendants cite to. They don't -- first of all, Your
21 Honor, federal courts, as we said, have shown little tolerance
22 on any narrowing in Section 208. This bill, Senate Bill 2358,
23 limits for more -- I apologize, Your Honor. The district court
24 cases that they cite to, Priorities, first of all, is wrong,
25 a -- quote, a person of their choice does not mean that there

1 is some sort of limitation. Because as we cite to in our reply
2 brief, "a" can mean "any."

3 Additionally, if you go back into the congressional
4 record, Section 208's purpose was that voters with disabilities
5 are the best person to select. They know which assister would
6 be able to assist them, and Congress said that even though the
7 state has interests, that they weigh these interests and said
8 that the voter must be able to be given that choice.

9 Defense talks about they want to -- their interest is
10 about making sure there is no crime or no fraud in voting.
11 Mississippi already has laws that protect against this, so this
12 issue is already protected. And what Congress said in
13 Section 208 is that voters must be given the person of their
14 choice. That's what the Fifth Circuit said as well.

15 Your Honor, and to your question, yes, defendants are
16 asking you to write a definition of "caregiver" which will not
17 be bound -- which county prosecutors won't be bound to and
18 state courts won't be bound to. This shows an impermissible
19 narrowing.

20 And I just want to go quickly back to OCA-Greater
21 Houston because the restriction there was on an interpretator.
22 They said that someone can get interpretation assistance but it
23 had to be a registered voter. The court said that was
24 impermissibly narrow. So even if defendants argue that
25 plaintiffs' definition of 208 is, is overbroad, right, our

1 definition comes from the Fifth Circuit which said that was
2 impermissibly narrowed. Senate Bill 2358 limits voters'
3 choices to only those few exceptions.

4 And even though we have individual plaintiffs who
5 show that they don't meet these restrictions, our
6 organizational plaintiffs as well support this, Disability
7 Rights Mississippi, the protection and advocacy agency, they
8 have statutory authority to represent every single voter, every
9 single voter with a disability in Mississippi. They have been
10 given associational standing in 208 cases that we cite to in
11 our brief.

12 To the other remaining factors, Your Honor, defense
13 counsel said that they wanted to make sure every ballot, every
14 ballot is counted. That's exactly what an injunction will do.
15 It will allow all qualified voters to vote.

16 If this court doesn't enjoin Senate Bill 2358 when
17 absentee voting begins on July 29th, people are going to be
18 unsure if they could actually assist. Ms. Cunningham is not --
19 is going to be unsure if she can assist Ms. Elise, which the
20 discussion here shows that is she a family member, if she's
21 not. But the other thing that's for voters who don't have a
22 family member or caregiver, they need to be able to select the
23 person of their choice. Senate Bill 2358 restricts it, so they
24 will face irreparable harm for the public interest and the
25 balance of equities, or for the balance of equities, Your

1 Honor, the longstanding quo here, the longstanding status quo
2 is to allow assisters to assist.

3 The Ninth Circuit said that was sufficient. Feldman
4 versus Secretary of State, which shows it's sufficient here.

5 Unless the court has any other questions or...

6 No?

7 In conclusion --

8 THE COURT: I discussed with Mr. Miracle whether
9 there was any fact finding to show that Mississippi has
10 suffered ballot harvesting in large numbers so as to manifest a
11 contention that this is a matter that is of dire concern.

12 Are you aware of any such findings?

13 MR. SOUSSI: Your Honor, I'm not. And Section 208 of
14 the vote -- or how conflict preemption occurs that whatever --
15 whatever record there is that the state tries to present. What
16 they can't do is limit a federal right. That's what the Fifth
17 Circuit said in OCA, that they can't grant someone saying, hey,
18 we're giving you a right for assistance but then narrow the
19 group that you're going to be able to select from.

20 So, no, we -- there wasn't any evidence, but even if
21 the defense tried to bring up evidence that, oh, we have an
22 interest, first, they already have laws that deal with voter
23 fraud. That's covered. But what they can't do is to go to a
24 voter with a disability and say, We're limiting your option
25 more than what federal law guarantees that you have. That's

1 exactly what Senate Bill 2358 does. If this court doesn't
2 enjoin -- doesn't issue an injunction, then on July 29th voters
3 like Mr. Whitley will be unable vote, and that's exactly why
4 we're here asking for this urgent motion.

5 In conclusion --

6 THE COURT: What about the other two examples you
7 gave me?

8 MR. SOUSSI: Yes. Yes, Your Honor.

9 THE COURT: Do you think those persons would be able
10 to function as they have in the past?

11 MR. SOUSSI: Absolutely not, Your Honor.

12 And conflict preemption, when they talk about
13 obstacle, it doesn't have to be disenfranchisement. Chilling
14 effect goes to the obstacle of Congress's purpose. Congress
15 wanted people like Ms. Cunningham to go assist voters in her
16 community, and Senate Bill 2358 shows that she would -- she
17 fears the prosecution if she continues to assist. So she's not
18 going to -- or she's not -- she won't -- she will be at risk if
19 she continues this. And similarly for Ms. Gunn.

20 And to your question of whether she will be charged,
21 you and defense counsel had a discussion about, well, the state
22 might do this, the state might do that. The whole issue is
23 avoiding that. And that's what Congress did with Section 208.
24 They say the voter can select anyone other than those two
25 options, and in our plaintiff's example, they have been chosen.

1 But the fear of prosecution is too great.

2 THE COURT: In your request for this injunctive
3 relief you are also asking for something that's proactive, not
4 just restrictive but proactive.

5 So in your motion for preliminary injunction you
6 asked the court to put the brakes on the act in question. But
7 you are also asking that there be some proactive -- some
8 proactivity on behalf of the state to notify the persons of the
9 people of the state of this particular matter if the court
10 decides to allow it to go forward.

11 MR. SOUSSI: Um-hum.

12 THE COURT: Now, is that too far?

13 MR. SOUSSI: No, Your Honor.

14 And we cited to cases in our brief that explain that
15 in voting matters, especially since the primaries are coming
16 soon, and since we're talking about communities with
17 disabilities, this word needs to be put out because the
18 Secretary of State tweeted out about how this law is in effect
19 and there's going to be criminal prosecution, which goes to the
20 fear of prosecution. Voters need to know that they're going to
21 be -- that as opposing counsel said, every ballot should be
22 counted, and that's exactly what this affirmative statement
23 will do. It will guarantee that every single vote in
24 Mississippi is counted when absentee voting begins July 29th.

25 THE COURT: Let's go back over some of your

1 authority --

2 MR. SOUSSI: Yes, Your Honor.

3 THE COURT: -- that you say support this proactivity.

4 Talk to me about that.

5 MR. SOUSSI: Sure, Your Honor. We --

6 THE COURT: Mr. Miracle made a specific point near
7 the end of his presentation where he says that just goes too
8 far, for them to -- for the state to be required to notify the
9 citizenry of your interpretation or your side's interpretation
10 of this law.

11 Now give me your cases again.

12 MR. SOUSSI: Your Honor, I apologize. Are you
13 talking about the authority to put out a statement or authority
14 on Section 208?

15 THE COURT: Authority to put out a statement.

16 MR. SOUSSI: So we cite to two cases in our reply
17 brief. One of them is Thomas that talked about how the vote --
18 the word needed to go out, that voters needed to get the word
19 out because it was coming soon, and the other case, I
20 apologize, I don't remember on the top of my head, but we cite
21 to it in our brief.

22 THE COURT: Now, what were the facts in those cases?

23 MR. SOUSSI: I apologize, Your Honor. I don't have
24 them on the top of my head.

25 THE COURT: Well, I don't either. And when I was

1 going over the cases, since it was in the reply brief, and it
2 was near the back of the reply brief, I believe, I didn't get a
3 chance to see the facts of those cases. I've seen all the
4 rest, but I didn't see that one.

5 So can you check with your team over here and see if
6 anybody knows what the facts were?

7 MR. SOUSSI: Yes, Your Honor.

8 THE COURT: Go right ahead.

9 Brain trust, here he comes. Help him out.

10 (Conferring discussion.)

11 THE COURT: All right, counsel.

12 MR. SOUSSI: Your Honor, for Thomas, that was an
13 absentee witness requirement. And those -- during COVID-19.
14 And they wanted to get the word out because of the emergency
15 situation, which is exactly what we have here.

16 July 29th is approaching, voters need to know that
17 they could still vote. And without the affirmative statement,
18 this ruling, voters in Chickasaw County may -- other than our
19 plaintiffs -- may be unaware, which is why we stress that the
20 Attorney General and Secretary of State, just like they did
21 when they announced this criminal prosecution, go back and say
22 it's not in effect, voters can still vote.

23 THE COURT: But you had said that you wanted some
24 proactivity.

25 MR. SOUSSI: Yes, Your Honor.

1 THE COURT: And so what form should that take?

2 MR. SOUSSI: And we in our brief and in our motion we
3 state that any guidance with their normal position. So any
4 type of statement would be, would be sufficient.

5 We're not asking for something specific. But if the
6 court wants us to, we could come back and, you know, create
7 draft language that will specifically state what they would be
8 required to do.

9 THE COURT: Well, what is contemplated by that
10 statement, that you wanted the state to make these
11 announcements?

12 MR. SOUSSI: Just that Senate Bill 2358 is not into
13 effect for voters who, who have disabilities, who need to rely
14 on someone who isn't, you know, one of those three -- or one of
15 those exceptions of Section 208 voters being able to select the
16 person of their choice.

17 THE COURT: All right. And what about the second
18 case? I believe you said there were two cases.

19 MR. SOUSSI: Is it okay, Your Honor?

20 THE COURT: It's fine. Thank you.

21 (Conferring discussion.)

22 MR. SOUSSI: Your Honor, thank you.

23 On the second case, Arlene, that dealt with voters
24 similar in COVID, voters having to go in person and they said,
25 no, that early voting was still allowed and that put out the

1 word that these voters can still vote early.

2 And, two, what we're asking, we're not asking the
3 Attorney General or Secretary of State to make an onerous
4 burden on themselves. It's just the same thing they did when
5 the law was passed, put out guidance to make sure, to
6 guarantee, as defendant's counsel said, that every vote is
7 counted in Mississippi, which is why we're bringing this urgent
8 injunction because voting begins soon.

9 THE COURT: Are you asking that all -- that if the
10 court allows this matter to go forward, that the court supply
11 some definitions?

12 MR. SOUSSI: Your Honor, we believe any definition
13 would go against what 208 -- what Congress said 208's purpose,
14 and that was to make sure voters would be able to select the
15 person of their choice, other than an employer or union
16 representative. Once we start talking about definitions, first
17 of all, it goes to show that there is a conflict into that
18 broad, wide-ranging purpose. But also there is a question of
19 whether county prosecutors -- whether state courts are going to
20 be bound by this. And all of a sudden you're going to have
21 different ZIP codes prosecuting this crime differently, which
22 is a much -- which is a whole separate issue. Conflict
23 preemption states that if there is an obstacle, federal law
24 preempts state law.

25 Senate Bill 2358 creates this obstacle and it can't

1 be saved by -- by an opinion doing the legislature's job in the
2 first place.

3 THE COURT: So then what are you requesting here in
4 toto, you know, across the board, should this court grant your
5 motion for a preliminary injunction, forbid this law to go into
6 effect on July 1, and that is with no exceptions, no part of
7 the law should go into effect; is that correct?

8 MR. SOUSSI: No, Your Honor. It's only to voters who
9 have the right under 208. So voters who need assistance.

10 THE COURT: Okay. And then you are asking that a
11 public announcement be made that the assistance that was
12 provided to voters in the past can still be provided?

13 MR. SOUSSI: Yes, Your Honor, keeping --

14 THE COURT: No change?

15 MR. SOUSSI: Yes, Your Honor, keeping the
16 longstanding status quo.

17 THE COURT: And therefore there will be no criminal
18 prosecution, misdemeanor-wise, attached to that assistance.

19 MR. SOUSSI: To voters who are disabled, who are
20 enforcing their 208 rights, correct. Senate Bill --

21 THE COURT: Under 208.

22 MR. SOUSSI: Yes, Your Honor.

23 THE COURT: But anyone who is indulging in voter
24 fraud will be under other laws of the state and can, as in the
25 past, be prosecuted.

1 MR. SOUSSI: Absolutely, Your Honor.

2 And Senate Bill 2358 will still be in effect to
3 voters who are aren't covered under 208.

4 So they are still able to reach -- if -- the specific
5 goals of Senate Bill 2358, but as you mentioned, they have
6 other laws protecting against the harms they addressed today.

7 THE COURT: And the 208, what we're talking about is
8 voter assistance?

9 MR. SOUSSI: Yes, Your Honor, voters who are --

10 THE COURT: You are saying, then, that the voter
11 assistance can continue as it did before there was talk about
12 this new law?

13 MR. SOUSSI: Yes, Your Honor.

14 THE COURT: Anything else that would be part of this
15 preliminary injunction?

16 MR. SOUSSI: No, Your Honor, other than the, you
17 know, other than the defendants are unable to actually
18 prosecute under this law.

19 THE COURT: Okay. So they could not prosecute
20 anybody because, well, the law would be enjoined.

21 MR. SOUSSI: Yes, Your Honor.

22 THE COURT: And that would be it.

23 So that would be the sum extent --

24 MR. SOUSSI: Yes, Your Honor.

25 THE COURT: -- of what you are asking for.

1 And so this notion of redefining terms is repugnant
2 to you. In other words, you don't want any redefinition of
3 terms that are listed in this law to explain further what it
4 allegedly might mean?

5 MR. SOUSSI: Yes, Your Honor. We believe that when
6 Congress was clear that anyone, other than those two, those are
7 the only restrictions, and any type of actual defining goes to
8 what the legislature should have done in the first place, not
9 what this court can do. And it's that question of whether
10 we're going to have different ZIP codes doing different things
11 which creates a chilling effect going back to that obstacle of
12 conflict preemption.

13 THE COURT: Okay. Anything else you want to tell me
14 about?

15 MR. SOUSSI: Hopefully I wasn't too fast, but other
16 than that, Your Honor, no.

17 In conclusion, we ask this court to enjoin this
18 action because absentee voting begins July 29th, which is why
19 we're here on an urgent motion, because Senate Bill 2358
20 impermissibly narrows the voter's choice.

21 Thank you, Your Honor.

22 THE COURT: All right.

23 Now, Mr. Miracle. Would you approach the podium,
24 please? In fairness, I want to give you a chance to respond to
25 these two cases.

1 MR. MIRACLE: So my response --

2 THE COURT: Now, you were aware of these two cases --

3 MR. MIRACLE: In their reply.

4 THE COURT: -- which you sort of touched on them, and
5 I saw the names of the cases and I saw the blurb that
6 accompanied the two cases and what they allegedly said, but I
7 didn't see where there was any discussion of the facts of these
8 two cases.

9 MR. MIRACLE: Well, so --

10 THE COURT: And --

11 MR. MIRACLE: I apologize, Your Honor.

12 THE COURT: And so counsel has just now supplied me
13 some more information that would do that.

14 So then I want to hear your response to those two
15 cases with regard to this public announcement.

16 MR. MIRACLE: My response would be that the equating
17 fact that we're here on a preliminary injunction on a law that
18 goes into effect in July, which is the ordinary course of
19 business, and equate that with COVID and things that were done
20 during COVID I don't think stand for the proposition that then
21 in every case, every case that comes before Your Honor where
22 someone's asking for a preliminary injunction, they're asking
23 you to stop something from talking effect. That is what
24 injunctions do.

25 Under Rule 65 the court is well aware that they have

1 to be narrowly tailored, they have to be directed at the
2 person, tell them what they are prohibited from doing, all
3 those things that Rule 65 require.

4 So the COVID cases that he cites cannot stand for the
5 proposition that in all cases where, because we're close to a
6 date when this law will go into effect, that that's somehow an
7 emergency like we dealt with during the pandemic. I would
8 categorically say those cases are inapposite.

9 Also, the notion that -- and he couldn't tell you
10 what this statement would say; he said, well, it would be
11 something that we would come up with. The notion that the
12 court would craft an injunction that would order two state
13 officials to include certain language in public statements
14 under Rule 65 certainly violates the principle that injunctions
15 are to be narrowly tailored and only apply to the very specific
16 conduct that is to be enjoined.

17 Nor has he come before this court and said, Well,
18 there is going to be all this confusion statewide. We don't
19 know who even knows about 2358. We've heard some testimony, we
20 have heard some discussion about efforts that the two
21 organizations have made to educate people about the law going
22 into effect. So -- but that's all we know.

23 So we have no proof before this court whatsoever
24 about what anybody knows or doesn't know about 2358 going into
25 effect. So an order coming from this court that would direct

1 the Secretary of State and the Attorney General to say specific
2 things to the public I think violates all precepts of Rule 65.
3 And it's certainly not supported by two COVID cases where we
4 were in a different environment. But what I heard him say was
5 we're here in an emergency. Well, in some sense all
6 preliminary injunctions or TRO matters that the court hears
7 have some element of, you know, time attached to them. But
8 that does not turn this into then that the Secretary of State
9 and the Attorney General have some legal obligation to make a
10 public statement. I think that simply would go beyond the
11 scope of any permissible injunction if, and only if, the court
12 were to grant a very narrowly tailored injunction only limited
13 to the enforcement of Section 208 as it relates to the people
14 that are covered by 208, which he has confirmed for this court.
15 But to then say that there is some additional affirmative duty
16 beyond that, that simply I think goes beyond anything under
17 Rule 65 and would be subject to potential further review, and
18 unnecessary.

19 Because, again, there is no proof before this court
20 about what the public knows or doesn't know about 2358 other
21 than what efforts may or may not have been done by these
22 groups. These same groups can educate their voters about what
23 the current state of the law is, as they have told the court
24 here today, they have been doing. But, again, I think that
25 would, that would go well beyond the bounds of any, any

1 injunctive relief under Rule 65 to order two state officials to
2 say something in particular, as opposed to if the court says,
3 I'm enjoining this law from taking effect; then, like any other
4 injunction, the state officials are prohibited from
5 effectuating that law.

6 So unless the court has any further questions, I
7 don't have anything further on that point, Your Honor.

8 THE COURT: All right. Thank you.

9 Since it is your motion, then, you always get the
10 last word.

11 You styled your motion, quote, Memorandum of Law in
12 Support of Plaintiff's Urgent and Necessitous Motion for
13 Preliminary Injunction. And I focused on the words "urgent"
14 and "necessitous."

15 Do you utilize those terms just because of the
16 approaching date when the law is supposed to go into effect or
17 was there some other reason why you added the words "urgent"
18 and "necessitous"?

19 MR. SOUSSI: Your Honor, I believe it's both reasons.
20 The law goes into effect July 1st and absentee voting begins
21 July 29th. But also the chilling effect that this law creates.
22 Opposing counsel said no one knows about this. The
23 secretary -- the reason why we say it's a few exceptions is
24 because the Secretary of State tweeted out that, this law is in
25 effect, will only allow a few exceptions. So it is known that

1 if someone assists, is not a family member, not a caregiver or
2 a household member, they will be subject to criminal penalties.

3 And because the organization's -- part of their
4 effort is kickstarting for the August primary to get out the
5 vote, make sure people -- because how Mississippi does absentee
6 voting, a voter isn't just able to go on election day to
7 register to vote. It's a long process that we cite to in our
8 brief. An absentee voter who votes by mail first has to apply,
9 then sends it in, then gets the ballot back and has to have
10 that as someone there to sign the ballot. It's a long process
11 that will take time. And from Ms. Cunningham's declaration
12 demonstrates that this is not something that just can occur.
13 Which is why we're here on this urgent motion, because
14 primary -- the, the assistance has already begun and that
15 chilling effect, that question is still there.

16 And to -- to defendant's other comment about this
17 injunction only being to the defendants. First, Disability
18 Rights Mississippi covers every single voter within Mississippi
19 who has a disability, but also as we cite to in our brief, that
20 in voting cases for similarly situated plaintiffs -- similarly
21 situated people are able to benefit because here we're saying
22 this law is preempted on its face.

23 And we do have cases, Your Honor, that talk about
24 public statements that are outside of COVID. One of them is
25 the Fish versus Kobach case, and in that case the defendant was

1 a party that continuously disregarded the court's orders, so
2 they said you had to put a statement out. Which I understand
3 is different here. But because the election is coming up and
4 because Mississippi has such a long process for voters to vote,
5 we believe that this statement will be part and parcel of this
6 injunction, to make sure, as defendants' counsel said, every
7 ballot is counted.

8 So unless the court has any other questions or...

9 In conclusion, Your Honor, we ask this court to grant
10 plaintiffs' motion in full.

11 Thank you.

12 THE COURT: Mr. Miracle, did I see your hand?

13 MR. MIRACLE: Yes, Your Honor. If I may make one
14 final point, only because --

15 THE COURT: Stand up then. Go to the podium.

16 MR. MIRACLE: Only because Your Honor raised the
17 point about the urgent necessitous motion, and now that it
18 seems that they're trying to seek some relief based on a
19 compressed time frame, I would note that this bill was signed
20 by the governor on March 23rd, 2023. This lawsuit was not
21 filed till March -- May 31 or June 1st, somewhere in that time
22 frame. It's on the filing.

23 So, again, I only raise that because the court has
24 brought this issue up about the timing. And so there was a
25 considerable delay in coming to the court seeking injunctive

1 relief, and now they're saying, well, now we've got this
2 compressed time and all these things have to happen, and, you
3 know, that in and of itself, and it's not in our brief, but
4 that in and of itself, that delay can be seen as a lack of
5 irreparable harm. I'm not suggesting that here, but to the
6 extent that the court is inquiring about the urgent,
7 necessitous nature, and now they're telling the court we have
8 to have certain relief because of this shortened time frame,
9 there was a long delay before this lawsuit was filed, that they
10 could have brought it earlier.

11 So I just think, out of fairness, I think that's
12 something that needs to be in the record.

13 THE COURT: I need to give you back your last
14 statement.

15 This, this matter was filed May 31, 2023, just a few
16 days ago. So then Mr. Miracle has pointed to that filing when
17 the -- this measure was passed before that, but he's pointing
18 to the fact that only recently was this matter filed before the
19 court. And we set it as fast as we could once it was submitted
20 to us.

21 So you want to make a response?

22 MR. SOUSSI: Yes, Your Honor.

23 We filed in a reasonable time. But also, Your Honor,
24 the discussion of how this reflects that we don't have
25 irreparable harm is completely false. Federal courts in all

1 districts, including the Fifth Circuit, have held that the
2 restriction on someone's right to vote is an irreparable harm,
3 and that goes to because once an election occurs, that voter
4 won't be able to get that back. And for the assisters, the
5 fear of prosecution is so great, like you explained to opposing
6 counsel, this chilling effect of "Am I a family member, am I
7 this or am I that, I'm not even going to do this because I
8 don't want to be prosecuted" is irreparable harm. So we filed
9 in a reasonable time, Your Honor. And to argue that that
10 somehow means there isn't irreparable harm directly conflicts
11 with what the precedent is regarding injunctions.

12 And unless the court has any other questions, we ask
13 this court to grant plaintiffs' motion in full.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Thank you for your spirited arguments. And if you
17 have any additional authority that occurs to you, now that you
18 have made your arguments, additional authority which is not
19 contained in your brief, then submit it to me by Thursday
20 afternoon, 5:00 o'clock, so that I may consider it.

21 Now, with that, is there anything else from the
22 plaintiffs?

23 MR. SOUSSI: No, Your Honor. Thank you.

24 THE COURT: All right. Thank you so much.

25 Anything else from the defense?

1 MR. MIRACLE: No, Your Honor. Thank you.

2 THE COURT: Then thank you so much.

3 Then I'll be in contact with you shortly. But I will
4 await to see if you have any additional authority on this
5 matter, and arguments, then I'll go ahead and craft an opinion.

6 Thank you so much.

7 COURT OFFICER: All rise.

8 (Proceedings concluded at 12:08 p.m.)

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1 CERTIFICATE OF COURT REPORTER

2 I, Fred W. Jeske, RMR, CRR, Official Court Reporter
3 for the United States District Court for the Southern District
4 of Mississippi, appointed pursuant to the provisions of Title
5 28, United States Code, Section 753, do hereby certify that the
6 foregoing is a correct transcript of the proceedings reported
7 by me using the stenotype reporting method in conjunction with
8 computer-aided transcription, and that same is a true and
9 correct transcript to the best of my ability and understanding.

10 I further certify that the transcript fees and format
11 comply with those prescribed by the Court and the Judicial
12 Conference of the United States.

13
14
15 s/Fred W. Jeske
16 FRED W. JESKE, RMR, CRR
17 OFFICIAL COURT REPORTER
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